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COURT OF APPEALS DIV. I
STATE OF WASHINGTON
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COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 06-1-01271-5
)	COA No. 59553-9-I
Respondent,)	STATEMENT OF ADDITIONAL
)	GROUND PURSUANT TO
VS.)	RAP 10.10
)	
ALEXANDER ALVARADO,)	
)	
Appellate,)	
<hr/>		CLERK ACTION REQUEST

Comes now the petitioner, Mr. Alexander Alvarado moves this court to review statement of additional grounds he has submitted to this court pursuant to Rap 10.10.

This statement of additional grounds is based upon the opening brief prepared by my attorney and my review of the court transcripts which I received. Summarized below are the additional grounds for review that are not addressed in the brief. I understand the court will review this brief when my appeal is considered on its merits.

ADDITIONAL GROUNDS - 1

The petitioner's Fifth (V), Sixth (VI), and Fourteenth (XIV) Amendments to the U.S. Constitution were violated by not proving all the elements of the charged crime.

The Due Process Clause requires the government to prove beyond a reasonable doubt every element of the crime with which a defendant is charged. In re Winship, 379 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). This applies to State proceedings. Sullivan v. Louisiana, 508 U.S. 275, 273 (1993). State v. Deal, 128 Wn 2d 693, 911 P2d 996 (1996). (quoting State v. Hanna, 123 Wn 2d 704, 710 871 P.2d 135 (1994)).

Here the petitioner was charged with residential burglary: The evidence was insufficient to support the residential burglary conviction. [A] person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling of the building other than a vehicle. RCW 9A.52.025 (1).

Here, Mr. Alvarado argues constitutionally, not that he lacked the capacity to form the required specific intent for residential burglary, but that the evidence was insufficient to find that he entered or remained unlawfully in the residence with intent to commit a crime against a person or property therein.

The state may use evidentiary devices, such as presumptions and inferences, to assist it in meeting its burden of proof, though they are not favored in criminal law. Hanna, 123 Wn 2d at 710 supra. The permissible inference of criminal intent is found in RCW 9A.52.040. Due process requires the state to bear the "burden of persuasion beyond a reasonable doubt of every essential element of a crime. Deal, 128 Wn. 2d at 698 Supra. Thus, applying a common sense interpretation, Mr. Alvarado was never seen in the house or leaving the house by any witnesses.

Therefore sufficient evidence does'nt support the jury's verdict finding Mr. Alvarado of residential burglary.

ADDITIONAL GROUNDS - 2

The petitioners Fifth (V), Sixth (VI), and Fourteenth (XIV) Amendments to the U.S. Constitution were violated by the denial of effective assistance of counsel.

Appellate review of ineffective assistance of counsel claims are especially important. In considering, the court has a strong inducement to dispose of ineffective counsel claims by labelling as "strategic" assistance. But, that which is truly substandard, ineptitude and even callous disregard for the client, can not be brushed off as "tactical decisions," insulated from constitutional review.

To prevail on this above claim, a petitioner must demonstrate: [F]irst, that counsels performance was deficient. This requires showing the court that counsel was not functioning as the counsel guaranteed the petitioner by the Sixth Amendment of the U.S. Constitution.

[S]econd, the performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the petitioner of a fair trial, a trial whose result is reliable.. Strickland v. Washington, 466 U.S. 668, 678, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) To satisfy the first prong of this test, the petitioner must overcome the 'strong presumption that counsels conduct falls within the wide range of reasonable professional assistance."

At the time that trial counsel represented the petitioner, he was deficit in Professional Conduct (RPC 1.4) which included (a) and (b) Washington Court Rules, State Rule 1.4 The American Bar Association Standards for Criminal Justice (A.B.A.) Standards). Defense function, (4-5.1).

A jury convicted Mr. Alvarado of several crimes which included count(1) residential burglary 9A.52.025(1) count(2) Theft in the first degree 9A.56.030(1)(a) and 9A.56.020(1)(a) count (3) Possession of stolen property in the first degree 9A.56.150(1) count (4) possession of stolen property in the first degree count (5) residential burglary 9A.52.025(1) count (6) possession of stolen property in the second degree 9A.56.160(1)(a) count (7) unlawful possession of a controlled substance, to-wit: less than 40 grams of marijuana 69.50.4014 count (8) unlawful possession of a dangerous weapon 9.41.250. Mr. Alvarado appeals.

[F]irst, this hinged upon the, communication of his attorney to inform his client of all the facts and findings of law in his proceedings before trial and during. Which is first and foremost in understanding all the consequences and out comes of the legal requirements by communicating between client and counsel. Mr. Alavardo did not understand any of the legal proceedings at all.

Washington Rules of Professional Conduct (RPC 1.4) (a) (b)

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable request for information.

(b) A lawyer shall explain a matter to the extent reasonable necess to permit the client to make informed decisions regarding the representation. Such was not the case with Mr. Alvarado and attorney.

Washington Court Rules, State----Rule 1.4.

(a) After informing himself or herself fully on the facts and the law, the lawyer should advise the accused with complete candor concerning all aspects of the case, including a candid estimate of the probable outcome. Again such was not the case between Mr. Alvarado and his counsel. He had know knowledge or understanding how his attorney would proceed.

The American Bar Association Standards for Criminal Justice (A.B.A. Standards). Defense function, Standard 4-5.1

(b) Strategic and tactical decisions should be made by defense counsel after consultation with the client where feasible and appropriate. Such decisions include what witnesses to call, whether and how to conduct cross-examination, what jurors to accept or strike, what trial motions should be made, and what evidence should be introduce or suppressed. Such was not the case here. A.B.A. standards, defense function, standards 4-5.2. was not upheld in Mr. Alvarado jury trial.

A.B.A. Standards, Defense Function, Standard 4-5.2.

The petitioner is neither skilled nor educated. And should have had a interpreter throughout the trail. But, this fact has little relevance to the fact that there was no communication between the attorney of the record and the petitioner as defined in all of the above requirements. There was no proper 3.5 suppression hearings challenging evidence; no opening statement by defense; calling the petitioner; to testify; no expert witnesses were called for DNA and finger prints (also available); no objections to prosecutions leading questions; and incompetent cross examination of witnesses and jurors before jury section which prejudiced Mr. Alvarado who should have had a motion for mistrial granted.

Referring to: Verbatimm report of December 11, 2006 (pages 25 at lines 14-17)

"Now, the state's informed me that Mrs. Kennard is not going to be a witness for the state but she is married to one of the State's witness and one of the alleged victims in the case." Hence this prejudice Mr. Alvarado.

Verbatim Report of Proceedings December 11, 2006 page 30 at line 1-14

"Mr. Olson: Your Honor, I regret to ask but I think I have to ask that we get a different jury and the reason that I have to ask that is because when the jurors deliberate, the impressions, the personal emotional impressions of these two jurors may influence the other jurors unnecessarily. I think that the court would know that had this come to light during voir dire I may well have exercised peremptory challenges against these jurors and did not have that opportunity because this information wasn't in front of us."

Referring to: Verbatim report of December 11, 2006 (Page 31 at lines 3-11)

"The defense statement that had they had this information they may have inquired further or used a peremptory challenge against these juror's, certainly that could be the case except the failure to get the information from the jurors that they've disclosed was, I guess, as a result of the appropriate questions not being asked"

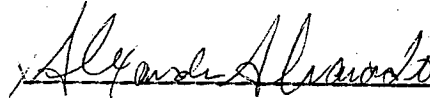
Mr. Alvarado was denied the motion for a mistrial. which prejudiced him because the state and his attorney deliberately disregarded proper jury instructions cross-examination of witness and juror. This effected his Fifth (V), Sixth (VI), and Fourteenth (XIV) Amendments to the U.S. Constitution for a fair trial.

For the above-mentioned reasons petitioner respectfully asks that the court find that petitioner's statement of additional grounds be considered.

I declare under penalty of perjury under the laws of the state of Washington, pursuant to RCW 9A.72.085, and the laws of the United States, pursuant to Title 28 U.S.C. § 1746, that the foregoing is true and correct

Executed on this 13th day of September, 2007

Respectfully submitted

A handwritten signature in cursive script, appearing to read "Alexander Alvarado", written over a horizontal line.

Alexander Alvarado
SCCC -191 Constantine
Way Aberdeen, WA 98520

DECLARATION OF SERVICE BY MAIL

GR 3.1(c)

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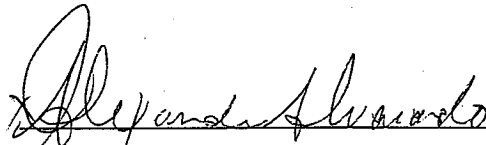
This is to certify and state under the penalty of perjury under the laws of the State of Washington that I have mailed a true and correct copy of the following document(s).

Seven page brief (ON STATEMENT OF Additional Grounds
RAP 10:10, and cover letter attached.

By depositing in the United States Mail, marked Legal Mail, postage prepaid, on this the
13th day of September, 2007, to the following: ATTN:

- | | |
|---|---|
| ① <u>Rosemary H. Kaholo Kula</u>
<u>Whatcom County / Prosecutor's office</u>
<u>322 N. Commercial, Suite 480</u>
<u>Civic Center Annex Bellingham</u>
<u>WA. 98225-4042</u> | ② <u>Richard D. Johnson / Admin/clerk</u>
<u>Division I Court ODE Union</u>
<u>Square 600 University Street Seattle WA</u>
<u>98101-4170</u> |
| | ③ <u>Casey Grannis Law offices of</u>
<u>Nielsen Bromann & Kott 1908 E</u>
<u>Madison St. Seattle, WA 98122</u> |

Respectfully Submitted,


Signature

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